Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 28th May, 2008 (Vaishaka 7,1930)

SERIES II No. 8

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

# SUPPLEMENT

## GOVERNMENT OF GOA

Department of Labour

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**Notification**

No. 28/01/2008-LAB/203

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa on 18-01-2008 in reference No. IT/21/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*B. S. Kudalkar,* Under Secretary (Labour).

Porvorim, 8th February, 2008.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/13/2005

Gopal Shirke and 143 others,
Workmen represented by
Goa Trade and Commercial
Workers Union,
Situated at Velho Bldg.,
2nd Floor, Opp. Municipal Garden
Panaji, Goa. ..... Workmen/Party I

V/s

1 M/s. Zuari Industries Ltd.,
Jaikissan Bhavan,
Zuarinagar Goa. ..... Employer/Party II

2 Deepak Kharangate,
Contractor, C/o M/s. Zuari
Industries Ltd., Zuari Nagar,
Goa 403 726. ..... Contractor/Party III

Party I/Workmen - represented by Adv. V. Menezes.
Party II/Employer - represented by Adv. G. K. Sardessai.
Party III/Contractor - represented by S. Chodnekar.

AWARD

(Passed on this 18th day of January, 2008)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 7-4-2003 has referred to this Tribunal following dispute for adjudication—

"(1) Whether the following dispute/demands raised by the Goa Shops and Industrial Workers Union on 30-9-2002 on behalf of the canteen contract workpersons at M/s. Zuari Industries Ltd., are legal and justified?

(a) That the contract between ZACL (ZIL) and Shri Deepak Kharangate with regard to running of the canteen in the factory premises is a sham and bogus contract;

(b) That the workman whose names are listed in Annexure A & B hereto and who are/were employed in the canteen at ZACL (ZIL) through the contractor are entitled to be absorbed as regular workmen of ZACL (ZIL) from 12-3-1997;

(c) That the canteen contract workpersons after regularization, are entitled to fitment as detailed in Annexure "C".

(2) If not, what relief the workpersons are entitled to?"

2. In response to notices both parties put their appearance in this Industrial Tribunal. Prabakar Ghodge who is President of Goa Shops and Industrial Workers Union presented claim statement for and on behalf of the workmen (in short the said workmen) on 11-8-2003 at Exb. 5. It appears from claim statement that the Party II which is registered under the Companies Act, 1956, is running business of manufacturing various chemical fertilizers in its factory situated in Zuarinagar, Goa. Near about 2000 workmen and more than 200 management staff are employed in the factory. The Party II has provided and maintained two canteens for use of workers in the factory premises. The Party II is running the canteens through contractor and is treating the said workmen as contract workers only with a view to deprive the said workmen from benefits available to permanent employees, and from continuity in the service which amounts to unfair labour practice. The Party III is engaged as a contractor by the Party II to run the canteen under a sham and bogus contract. The said workmen are continuously in the service right from their respective appointments even though the contractors are changed from time to time. The Party II has direct supervision and control over day to day working of the canteens. The Union brought to notice of the Party II and of the Government of Goa time and again that the Party II is denying status of permanency with all consequential benefits and fitments into appropriate grades to the said workmen. Neither the Party II nor the Government of Goa considered demands raised on behalf of the said workmen. Therefore, the Union filed Writ Petition bearing No. 130/1997 in the Hon'ble High Court of Bombay at Goa with a prayer of regularization of the said workmen in the service of the Party II. The Hon'ble High Court by judgment dated 18-5-2002 pleased to direct the Government of Goa to consider demands of the said workmen within a period of two months. The Union by sending letters to the Party II and also to the Government of Goa raised following demands:–

a to declare that the contract between the company and the Party III/contractor with regard to running of the canteens in the factory premises is a sham and bogus contract;

b. the said workmen employed in the canteens of Zuari Industries Ltd., through the contractor are entitled to be absorbed as regular workmen of the Zuari Industries Ltd., with effect from 12-3-1997;

c. even otherwise the canteen contract workmen are entitled to regularization due to long and continuous service and/or perennial nature of work;

d. independent of the demand/dispute number (a), the action of the management of the Zuari Industries Ltd., in continuing to employ canteen workmen as contract workmen constitutes an unfair labour practice under Item No. 10 of Vth Schedule of the Industrial Disputes Act, 1947;

e. the management of Zuari Industries Ltd., should be directed to cease and desist with the contract and to absorb the contract workmen w.e.f. 12-3-1997 with all consequential benefits which the regular workmen are getting; and lastly

f the contract workmen after regularization are entitled to fitment.

3. The Party II and the Party III refused to settle the dispute raised by the Union on behalf of the said workmen as a result conciliation proceeding held by Asst. Labour Commissioner ended in failure. Thereafter the Government of Goa has referred the dispute for adjudication to this Industrial Tribunal as stated earlier.

4. By presenting the claim statement the Union has prayed for declaration that the contract between the Party II and Party III interse is sham and bogus contract and for absorption of the said workmen as permanent workers of the Party II with full benefits and with fitments in grade/pay scales with effect from 12-3-1997.

5. The said workmen at the time of presenting the claim statement were represented by the Goa Shops and Industrial Workers' Union which was registered under the Trade Unions Act, 1926. They became members of the Goa Trade and Commercial Workers' Union (the said Union) w.e.f. 15-2-2006 which is also registered under the Trade Unions Act, 1926. Shaikh Usman is President of the said Union. In a meeting of General Body of the said Union held on 15-2-2006 the said Union is authorized to represent the said workmen in this reference. Therefore, as per order dated 8-6-2007 the said Union is brought on record by deleting name of the earlier union that is of Goa Shops and Industrial Workers' Union.

6. The said Union by making amendment further pleaded that, under letter dated 10-5-2006 sent to the Party II and Party III, it terminated settlement dated 3-5-2002 and seived on the Party II and Party III a fresh charter of demands without prejudice to contentions raised in the present reference. The charter of demands inter alia contains demand of increase in wages and of change in their service conditions. Settlement arrived at after negotiations in respect of these charter of demands is finally signed by the Party II on 27-9-2006.

7. The said Union by making one more amendment in the claim statement made out a case that one Pradeep Kumar Muzumdar, New Vegetable Market, Vasco da Gama, Goa, was supplying raw materials, that is, vegetables and groceries to the canteens under a contract. The Party II was making payment of the raw material directly to the supplier. The contract of supply of raw material is terminated by the Party II somewhere in the month of July, 2006. Since then, the Party II has engaged new contractor to supply raw materials to the canteens. The Party II is making payment of the raw material directly to the new supplier.

8 The Party II filed its written statement on 5-9-2003 at Exb. 8 and thereby combated claim made out by the said workmen. According to it, such dispute can be raised only by Union which represents workmen of principal employer. The Goa Shops and Industrial Workers Union has no locus standi to raise dispute for and on behalf of the said workmen. Abolition of contract labour system in any operation is not an industrial dispute. Therefore, the dispute which is referred for adjudication is not an industrial dispute. Declaration that the contract is sham and bogus as claimed by the said workmen can be granted only on abolition of contract labour system in canteen operation by appropriate Government in exercise of powers under Section 10 of Contract Labour Regulations and Abolition Act, 1970. (In short, the CLRA Act, 1970). Terms of the reference are beyond scope of pleadings and reliefs prayed for and of order passed by the Hon'ble High Court in Writ Petition No. 130/97. There is no application of mind by the Government before making the present reference. Therefore, the reference is null and void.

9 Further, it appears from written statement that, the Party II is a public limited company which is running business of manufacturing and of sale of fertilizers. The Party II has employed workers in categories of Craftsmen, Technicians, Asst. Operations and Laboratory Assistants. These categories are placed in various grades and those are result of settlements which are arrived at with workmen from time to time. The Party II has its own recruitment policy regarding minimum qualification, experience and age. Such recruitment policy can be revised from time to time in order to ensure efficiency and quality of manpower. The Party II has maintained two canteens as per provisions contained in Section 46 of the Factories Act, 1948. One of the two canteens is for employees working in plant offices, while another is for workmen of contractors working in the factory. Basic infrastructure is provided to the Party III/contractor by it as per provisions contained in the Factories Act, 1948 and Rules framed thereunder. Canteen operation is a specialized business. Therefore operation of the two canteen was always assigned to such contractors who had necessary experience in catering and hospitality industry. The Party III has a licence to run the canteens under provisions of the CLRA Act, 1970. The Party II is also registered under this Act for employment of contract labour. Last contract which was given to the Party III to run the two canteens was on 21-11-2001. This contract is renewed from time to time. The Party III has employed workmen for purpose of running the canteens under a contract of employment. All workmen employed by the Party III are covered under provisions of the Employees' Provident Fund Act and Employees' State Insurance Act, etc. The Party III is making appointments, is giving promotions and is discharging workmen as per requirement of work. Since services in the canteens are rendered during day and night at specified times, the Party III has employed supervisors and store supervisors to manage the canteen services during all the three shifts. These supervisors arrange shift schedules of workmen, grant leave to the workman, detain workmen for overtime duty when required and supervise activities of various categories of workmen like cooks, helpers and waiters. Workmen employed in the canteens are under supervisions and control of the Party III who is exclusively exercising discipline and control over them. There was never privity of contract between the Party II and workmen employed by the Party III. Such workmen formed Union and placed charter of demands on their behalf. They have signed various wage settlements with the Party III at several times during last twenty-two years. There are ten wage settlements between the Party III/contractor on one hand and the Goa Shops and Commercial Workers Union representing the said workmen on the other. These settlements are from the year 1978. Conditions of service of the said workmen are improved from time to time under these wage settlements. Once the said workmen are covered by these settlements they cannot stake inconsistent claim. The Party III has direct supervision over the said workmen. The CLRA Act, 1970 recognizes right of the employer to engage contract labour. Therefore, claim made out by the said workmen is not justified. On these and the above grounds the Party II asserted that the reference deserves to be rejected.

10. The Party III/contractor filed written statement on 5-9-2003 at Exb. 9. According to him, the issue which is referred by the Government of Goa for adjudication cannot be a subject matter of an industrial dispute. The reference is beyond the scope of Writ Petition No. 130/1997 and of order passed by the Hon'ble High Court in this Writ Petition. Therefore, the reference is bad in law. He is independent agency dealing with different business like catering for various events including weddings, parties, picnics, sale of farm produce, sale of exclusive fire arms, transportation and handling of iron ore, manganese as well as fertilizers. He has office and shops at Margao from where he is operating various business activities. He has sales tax registration and central sales tax numbers allotted by the local government and central government respectively. He has registration under Shops and Establishments Act and licences issued by Food and Drugs Directorate and also under provisions of CLRA Act, 1970, which are renewed every year. He was providing canteen services to various contract labour working in factory of the Party II from the month of July, 1988. Due to efficiency in running the contract labour canteen, the Party II assigned contract to him w.e.f. the month of April, 1989 to run works canteen within factory premises to provide catering services to employees of the Party II working in the factory. Thereafter, the Party II assigned contract to him w.e.f. 1-7-1993 for providing canteen services to office employees of Zuari Industries. He was required to prepare and provide food items at specified times and as per rates determined by canteen committees constituted under Section 46(d) of the Factories Act, 1948. The Party II has provided premises, furniture, utensils, cutlery, crockery, water coolers, deep freezers, water and electricity facilities

free of cost as per requirements under the said Act, 1948. He is responsible to maintain the canteen premises clean, tidy and in a proper and hygienic condition. He has employed workmen in categories of cooks, waiters, kitchen assistants, cleaners, supervisors and store supervisors for purposes of running the canteens. The Party II has no role in selection or recruitment of the canteen workmen. He is supervising and controlling work and activities of canteen workmen through his supervisors. He has power to promote and discharge canteen workmen as per requirements of work load, to initiate disciplinary proceedings against the canteen workmen and to impose punishment like withdrawal of increment and dismissal etc. He maintains attendance register and wage registers which are subjected to various inspections by Labour Authorities. He pays to the canteen workmen salaries and other benefits as agreed. The canteen workmen are covered by provisions contained in Employees' State Insurance Act and Employees' Provident Funds Act. He is responsible to resolve any dispute that may arise between him and the canteen workmen, and to pay to the Party II for loss or damage caused to furniture/equipments of the canteens. On these and above grounds he has also prayed for rejection of the reference.

11. The said Union submitted rejoinder on 15-9-2003 at Exb. 10. To put in nutshell the said Union has denied in the rejoinder in seriatim all contentions which are raised by the Party II and Party III in their respective written statements and which are adverse to interest of the said workmen. It is needless to reproduce the denials.

12. The Party II filed additional written statement on 19-6-2007 at Exb. 41 in answer to amendment incorporated in the claim statement. It appears from this additional written statement that the Party II admitted that it had entered into settlement with the Goa Trade and Commercial Workers' Union on 27-9-2006 with respect to terms and conditions of service of the workmen represented by this Union. The Party II was not a party to wage negotiations which culminated into the settlement. The Union representing the said workmen negotiated the charter of demands with Party No. III and entered into bar-partite settlement on mutual agreed terms. This settlement was registered with conciliation authority. There were similar settlements in the past also. There were different suppliers for various items in the canteens and which were selected by the Party II in consultation with the Party III to ensure quality of food items to be served in the canteens.

13. The Party III/contractor filed additional written statement on 19-6-2007 at Exb. 42. He admitted that he has received communication from Goa Trade and Commercial Workers' Union that the said workmen resigned fom membership of this Union w.e.f. 15-2-2006, that, by letter dated 10-5-2006 the said workmen terminated settlement dated 3-5-2002 and served a fresh charter of demands for revision of wages and changes in other service conditions, and that, after negotiations settlement is arrived at on 27-9-2006 between him and the said workmen. He further disclosed that the said Pradeep Kumar Muzumdar was supplying only vegetable and fruits as per his requirements for the canteen. Supply of other items was entrusted with other suppliers.

14. The said workmen submitted additional rejoinder on 25-6-2007 at Exb. 43 and asserted that, Arvind Cordeiro, the Deputy General Manager of the Party II, was present and he negotiated for settlement in respect of wages and actively took party in discussions on charter of demands placed by the said workmen and which was without prejudice to contentions raised in the present reference. They denied that they discussed charter of demands with the Party III, and that, the food items supplied to the canteens are selected by the Party III. They reiterated that it is the Party II which paid to the suppliers entire cost of the items supplied by them for the canteen.

15. On basis of pleadings the then learned Presiding Officer framed issues on 10-10-2003 at Exb. 15 as follows:–

1 Whether the Party I/Union proves that the contract between the Party II(1) Zuari Industries Ltd. (ZACL) and the Party II(2) Shri Deepak Kharangate for running the canteen in the factory premises is a sham and bogus contract?

2 Whether the Party I (Union) proves that the workmen listed in Annexure A and B of the order of reference are entitled to be absorbed as the regular workmen of Zuari Industries Ltd. (ZACL) from 12-3-1997?

3 Whether the Party I/Union proves that on regularization the workmen listed in Annexure A and D to the order of reference are entitled to fitment as detailed in Annexure 'C' to the order of reference?

4 Whether the Party II (1) M/s. Zuari Industries Ltd., proves that the Party I/Union has no locus standi to raise the dispute?

5 Whether the Party II (1) M/s. Zuari Industries Ltd., and the Party II(2) Shri Deepak Kharangate prove that the dispute raised is not an industrial dispute?

6 Whether the Party I/Union is entitled to any relief?

7. What Award?

16. My findings on the above issues are as follows:

Issue No. I: In the negative.
Issue No. 2: In the negative.
Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: In the negative.
Issue No. 6: In the negative.
Issue No. 7: As per final order.

REASONS

17. *Issue No. 1*: The Party II which is a public limited company is running business of manufacture and of sale of fertilizers in its factory situated in Zuarinagar, Goa. Prabhakar Godge, the President of Goa Shops and Industrial Workers' Union who is examined on behalf of the Party I pointed out in his evidence (Exb. 19) that more than 2000 workers and near about 200 employees in management staff are working in factory of the Party II. A. A. D'Souza, Deputy General Manager (Personal) who has filed affidavit in evidence on behalf of Party II at Exb. 57 admitted in para No. 22 of his cross examination that there were near about 575 workers and near about 400 employees in management cadre of the Party II in the year 1997, that is, when the present dispute was raised. Section 46(1) of the Factories Act, 1948, lays down that–

> *"the State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers."*

18. The Party II in response to the mandatory provisions contained in Section 46(1) of the Factories Act, 1948, quoted as above, has maintained two canteens in its factory premises. One of the two canteens is Works Canteen and another is Labour Canteen. Evidence of Prabhakar Godge supported by list annexure A' produced alongwith order of reference makes it clear that presently 82 workmen are working in Works Canteen, and 64 workmen are working in Labour Canteen. The Party II admitted in para No. 3 of its written statement (Exb. 8) that these two canteens are as per provisions contained in Section 46 of the Factories Act, 1948. It follows that these two canteens are statutory canteens. Evidence of the Deputy General Manager and which is in the nature of affidavit (Exb. 57) that one of the two canteens is under Section 16 of the Contract Labour (Regulation and Abolition Act) of 1970 and which is for the workmen of the contractors is clearly against admission given by Party II in para No. 3 of its written statement and as such this part of evidence given by the Deputy General Manager will have to be neglected.

19. Canteen operation is a specialized business. Therefore the Party II since the year 1982 is running the canteens through contractors. These contractors till the canteens are taken over by the Party II as contractor were M/s. Mehra, then Archarya and then B. S. Shetty. The Party II appointed the Party III as a contractor for the canteens on 8-4-1989.

20. According to Prabhakar Godge, the workmen represented by the said Union are working continuously and without break from dates of their respective appointments in the canteens even through contractors of the canteens are changed from time to time. The Party II is managing and supervising the canteens through its manager since the year 1984. It is the Party II which has provided premises, furnitures utensils, fixtures, gas, crockery, steel, cutlery and all other articles for the canteens. The Party II replaces and/or carries out repairs of the articles, fixtures, furnitures, crockery and cutlery etc. in case if those are damaged. The Party II by way of making appointment of a supplier provides cooking material for the canteens. The Party II provides facility for transport of cooked materials from the canteens to its administrative buildings as well as to its factory premises, and issues coupons whereunder food is supplied to its employees free of cost. The Party II directly makes payment to suppliers who supply articles for the canteens. Canteen manager and security personal of the Party II verify such articles. The Party II reimburses amount of salary paid by contractor to workmen of the canteens. The Party II was previously making contributions towards Provident Fund and Employees State Insurance of the workmen. Same was the position so far L. I. C. premium, family pension, retrenchment pension, bonus, gratuity or any other statutory payment were concerned. Direct employees of the Party II are entitled to subsidized food as a part of their service condition. Salary which they get is more than that which is being paid to workmen of the canteens . The Party II by way of making appointment of contractor to run the canteens is depriving workmen of the canteens from getting benefits which permanent workers of the Party II are enjoying. Contracts which are entered into by and between the Party II and Party III are sham and bogus which amount to unfair labour practice.

21. In support of its case the Party I examined one more witness Shaikh Usman at Exb. 21. He is member of Goa Shops and Industrial Workers' Union. He is continuously working as a Supervisor in works canteen since the year 1986. He is doing work of maintaining attendance register of workers, checking manpower and of collecting coupons at the counter. This work is mainly of clerical nature. He has given details regarding different types of work which are being done by the different categories of workmen in the canteens. He further pointed out that works canteen and labour canteen are meant for regular shift workers and for contract labour, respectively. The canteens are working in three shifts, that is, from 6.00 a.m. to 2.00 p.m. from 2.00 p.m. to 10.00 p.m. and from 10.00 p.m. to 6.00 a. m. He supported that he is continuously working in the canteen even though the contractors are changed, and that, the Party II adopted unfair labour practice by making appointment of contractor to run the canteens.

22. Affidavit of the Deputy General Manager (Personnel) and which is filed by him in evidence at Exb. 57 on behalf of the Party II shows that the Party III has obtained licence to run the canteens and is registered for employment of contract labour under the C.L.R. A. Act, 1970. The Party III is appointed as contractor to run the canteens pursuant to written contracts with effect from 16-8-1989. The Party III has employed the said workmen to run the canteens.

There is contract of employment between the Party III and the workmen interse. The Party III has covered the workmen of canteens under provisions of Employees' Provident Fund Act and Employees' State Insurance Act, etc. It is the Party III who appoints, promotes and discharges workmen as per requirements of work, and takes disciplinary action including that of withdrawal of increments, suspension and dismissal against the workmen depending upon gravity of misconduct. Party III has exclusive control and supervision over the workmen and work of the canteens. There was never privity of contract between Party II and workmen employed by Party III for the canteens. The contracts entered into by and between Party II on one hand and the Party III on the other are genuine.

23. The Party III filed his own affidavit in evidence at Exb. 65. His evidence is more or less the same with that of the Deputy General Manager (Personnel). It is needless to reproduce his evidence. He further pointed out that he employs for the canteens, workmen in categories of cooks, waiters, kitchen assistants, cleaners, supervisors and store supervisors, etc. The Party II has no role in employing workmen of these categories. He has also given details regarding duties which are being performed by workmen of these different categories. He is the authority to sanction leave applied for by the canteen workmen. He is deducting tax at source from income chargeable under salaries of the workmen. He is guarantor to the workmen who have obtained loans from various banks and other financial institutions. He is competent to recover wages paid in excess to workmen and also installments from their salaries as per order received from Recovery Officer and Asst. Registrar for Co-operative Societies under the Maharashtra Co-operative Societies Act, 1960 applicable to the State of Goa. He has entered into various settlements with the Union representing the workmen of canteens. He is competent to settle terminal benefits. He is responsible to settle dispute that may arise between him and the workmen.

24. Xerox copies of the contracts which are entered into by and between the Party II and Party III are produced at Exb. 10, colly. The first contract is entered into on 16-8-1989 and it is for period from 8-4-1989 to 30-6-1990. Second contract is entered into on 27-8-1990 and it is for period from 1-7-1990 to 30-6-1992. Third contract is entered into on 30-6-1992 and it is for period from 1-7-1992 to 30-6-1995. By letter dated 11-7-1996 of which xerox copy is produced at Exb. W-12 the contract dated 30-6-1992 which was for period from 1-7-1992 to 30-6-1995 is renewed for further period from 1-7-1995 to 31-3-1996 on the same terms and conditions. Fourth contract is entered into on 13-3-1997 and it is for period from 1-4-1996 to 31-3-1997. By letter dated 15-6-1998 of which xerox copy is produced at Exb. W-13, though it is stated that the earlier contract dated 13-3-1997 was valid for period from 1-4-1997 to 31-3-1998, this position is apparently not correct. Because the contract dated 13-3-1997 was for period from 1-4-1996 to 31-3-1997 as stated in Clause No. 6. By letter dated 15-6-1998 (Exb. W-13) the contract dated 13-3-1997 is renewed for further period from 1-4-1998 to 31-3-1999 on the same terms and conditions except value of coupons. By letter dated 20-5-1999 of which xerox copy is produced at Exb. W-14, the contract dated 15-6-1998 which was for period from 1-4-1998 to 31-3-1999 is renewed for further period from 1-4-1999 to 31-3-2000 on the same terms and conditions. The fifth contract is entered into on 26-5-2000 and it is for period from 1-4-2000 to 31-3-2001. The last contract of which xerox copy is produced is entered into on 21-11-2001 and it is for period from 1-4-2001 to 31-3-2002. Though it appears from chart styled as canteen contract (dates/periods) that there are contracts between the Party II and Party III in respect of the canteens for further periods from 1-4-2002 to 31-12-2002, from 1-1-2003 to 30-4-2003 and for period from 1-4-2003 to 31-7-2003, neither these contracts nor copies thereof are produced on record. All these contracts are challenged by the said Union representing the workmen in this reference.

25. The Deputy General Manager (Personnel) admitted in para No. 35 of his cross examination that work of the canteen runs in three shifts each of eight hours. Evidence of Party III from para No. 135 of his cross examination further discloses that there are three shifts, first from 6.00 a.m. to 2.00 p.m. second from 2.00 p.m. to 10.00 p.m. and third from 10.00 p.m. to 6.00 a.m, for some of the cooks and supervisors. Shift timing for waiters and cleaners are from 8.00 a.m. to 4.00 p.m. from 4.00 p.m. to 12.00 midnight and from 12.00 midnight to 8.00 a.m. There is also a general shift from 8.30 a.m. to 5.30 p.m. with one hour break. Lady cleaners, some of the supervisors and some of the cooks work in the general shift. Service to the contract employees and to direct employees of the Party II is rendered by the canteens at various plants, and meals are served by the canteens at some of the locations where the employees of the Party II are working. Thus, if evidence of the Deputy General Manager and of the Party III is read together, their evidence will certainly lead to logical conclusion that work of the canteens is of perennial nature as rightly pointed out by learned advocate of the Party I.

26. The Party II has maintained the works canteen and the labour canteen as per mandatory provision contained in Section 46(1) of the Factories Act, 1948. I, therefore, without going to any other contentions raised by learned advocate of the Party-I, hold that the two canteens are integral part of the regular/main operations or functions carried out by the Party II.

27. Learned advocate of the Party I argued that the contracts entered into by and between the Party II and Party III are with retrospective effect. There was neither communication nor acceptance of proposal nor there were concluded terms of the contract during the period to which retrospective effect is given under the contracts. It follows that these contracts are not in conformity with provisions contained in the Indian Contract Act, as a result, such contracts are not enforceable. The learned Advocate could not point out express provision whereunder retrospective effect to such contract is barred or prohibited. In my view contract can be with retrospective effect. It is evident that office bearers of Goa Shops and Industrial Workers Union entered into settlement with B. S. Shetty on 9-4-1986 (Exb. E-1) and

with B. S. Shetty and Party III on 9-1-1984 (Exb. E-7) 22-6-1995 (Exb. E-2), 27-7-2001 (Exb. E-8) and on 3-5-2002 (Exb. E-3). If the periods for which these settlements were operative and the dates on which these settlements are signed are taken into consideration, it becomes apparent that, these settlements are with retrospective effect. When representatives of the said workmen have accepted the settlements with retrospective effect, they are not entitled to claim that the contracts which are with retrospective effect are not enforceable. They cannot approbate and reprobate at one and the same time.

28. Learned advocate of the Party I by referring provisions contained in the said Act, 1872, tried to challenge legality and validity of the contracts. Question as to whether the contracts are legal and valid is beyond scope of reference. To be more clear such question cannot be decided in the reference under the said Act, 1947. Question which is required to be decided in this reference is as to whether the contracts are sham and bogus and not as to whether the contracts are legal and valid, as rightly pointed out by learned advocate of the Party II. I, therefore do not agree with argument advanced by learned advocate of the Party I that the contracts which are with retrospective effect are not enforceable and that the contracts on the touch stone of the Indian Contract Act, 1872, are not legal and valid.

29. Learned advocate of the Party I further argued that the canteens are integral part of regular/main operation or function carried out by the Party II, that the work of canteens is of perennial nature, that the said workmen are continuously working in the canteens right from dates of their respective appointments even though contractors are changed from time to time, that, entire furniture for the canteens is provided by the Party II, that, the salary which is paid by the Party III to workmen of the canteens is being reimbursed by the Party II, that, the Party II is directly making payment to the suppliers who are supplying raw material of food to the canteens, and that, the contractor is not required to make expenses out of his own pocket to run the canteens. All these circumstances, are pointer of fact that the workmen of the canteens are employees of the principal employer, that is, of the Party II. The contracts which are entered into by and between the Party II and Party III are with oblique motive to keep away workmen of the canteens from all benefits which the regular or permanent employees of the Party II are getting. Therefore, in his opinion, the contracts are sham and bogus. To substantiate his argument that the workmen of the canteens are employees of the principal employer, that is, of the Party II, he relied upon decisions from various reported cases which I am going to refer.

30. In case of *Husseinbhai Calicut.... Petitioner v/s The Alath Factory Thezhilali Union Kozhikode and others..... Respondents, reported in (1978) 4 SCC 257,* the Petitioner was a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the Petitioner to get such works done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The Hon'ble Supreme Court held that:

> *"The facts found that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade, the workmen were broadly under the control of management and defective articles were directed to be rectified by the management, this concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner."*

31. In case of *Indian Petrochemicals Corporation Ltd., and another .....Appellants; v/s Shramik Sena and Others .....Repondents, reported in (1999) 6 SCC 439,* the respondent workmen were employed in the statutory canteen (maintained in compliance with Section 46 of Factories Act) in the appellant's establishment. The canteen was managed by contractor. The said workmen filed Writ Petition before the Hon'ble High Court to seek a declaration that they were regular workmen of the appellant's establishment with right to pay scales and service conditions applicable to regular workmen. They further sought a direction to appellant to absorb them with effect from the date of their entry in the service of the canteen and to pay them all consequential benefits. The appellant opposed the workmen's claim. The Hon'ble High Court directed the appellants to absorb the workmen in employment with certain conditions. The matter went upto the Hon'ble Supreme Court. It is observed by the Hon'ble Supreme Court in para No. 17 of the judgement that the Factories Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts of policies. The Hon'ble Supreme Court held in para No. 22 of the judgment that the workmen of statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only, and not for all other purposes. It was established by way of affidavits and the contracts entered into between the management and the contractor that:–

a) the canteen has been there since the inception of the appellant's factory;

b) the workmen have been employed for long years and despite a change in contractors the workers have continued to be employed in the canteen;

c) the premises, fixtures, furniture, fuel, electricity, utensils etc., have been provided for by the appellant;

d) the wages of the canteen workers have to be reimbursed by the appellant;

e) the supervision and control on the canteen is exercised by the appellant through its authorized officers, as can be seen from various clauses of the contract between the appellant and the contractor;

f) the contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant;

g) the workmen have the protection of continuous employment in the establishment.

Considering all the above factors cummulatively in addition to the fact that the canteen is the establishment of the Management is a statutory canteen, the Hon'ble Supreme Court held that the respondent workmen are in fact the workmen of the appellant management.

32. In case of *Indian Overseas Bank v/s I. O. B. Staff Canteen Workers Union and Anr. Reported in JT 2000(4) SC 503,* question of relationship of 33 canteen workers of Indian Overseas Bank staff canteen with management was involved. The Industrial Tribunal considering facts that:–

a) the canteen is in the premises of the bank;

b) the canteen is for the exclusive use of the staff of the bank;

c) the working hours and days of the bank;

d) the Bank provided infrastructure like furniture, utensils, refrigerators, water coolers apart from meeting cost of gas, electricity and water;

e) the cost of the materials were met and wages for the workmen are also met only from the funds provided by the Bank;

f) neither the workers nor the Managing Committee contributed either to the capital or the expense for running the canteen;

g) the Bank gave subsidy for supplying food articles to its employees at concessional rates;

h) cycles and tricycles were provided to the canteen for supply of food stuffs;

held that the employees of the canteen will have to be treated as the employees of the Bank. The management filed Writ Petition challenging the Awards passed by the Industrial Tribunal. Hon'ble Single Judge of Madras High Court by order dated 8-3-1996 quashed the impugned Awards. The workers' union took up the matter on appeal before Hon'ble Division Bench of the High Court. The Hon'ble Division Bench set aside order of the Hon'ble Single Judge and restored Awards passed by Industrial Tribunal. Appeals were preferred to the Hon'ble Supreme Court against Judgement of the Division Bench of Madras High Court. The Hon'ble Supreme Court dismissed the appeals. Principles culled out in respect of Employer-employee relationship by the Hon'ble Supreme Court in case of *Parimal Chandra Raha and others v/s Life Insurance Corporation of India and others, reported in J.T. 1995 (3) S.C. 288 1995 SUPP. (2) SCC 611* are referred in para No. 10 of the judgement delivered in the case of Indian Overseas Bank referred to above. These principles are brought to my notice by learned advocate of the Party I during the course of his argument.

33. Observations made by the Hon'ble Supreme Court in case of *Parimal Chandra Raha v/s L.I.C. of India, alluded supra* and upon which reliance is placed by learned advocate of the Party I are referred by the Hon'ble Supreme Court in para No. 11 of Judgement delivered in case of *G.B. Pant University of Agriculture and Technology v/s State of U.P. reported in (2000) 7 Supreme Court Cases 109*. I quote the observations–

> *"The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time taking steps to provide the said services. The canteen committees, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The corporation has been taking active interest even in organizing the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the; Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the records show that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the*

*mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen viz. the premises, furniture, electricity, water is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary break down in the canteen service, on account of the agitation or of strike by the canteen workers it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the Cooperative Society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a vail between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."*

34. Tests led down by the Hon'ble Supreme Court for determination that the workmen are employees of the management in case of *Indian Petrochemicals Corporation, alluded supra* and which are reproduced above are referred by the Hon'ble Supreme Court in para No. 9 of the judgement delivered in case of *VST Industries Ltd., Appellant v/s VST Industries Workers Union and another, Respondents, reported in (2001) 1 Supreme Court Cases 298.* It is needless to reiterate the said tests which are relied upon by learned advocate of the Party I.

35. Four principles evolved by the Hon'ble Supreme Court in case of *Parimal Chandra Raha v/s L.I.C. of India alluded supra* and which are relied upon by learned advocate of the Party I are referred to by the Hon'ble Supreme Court in case of *Union of India and Others appellants v/s M. Aslam and others, respondents reported in (2001) 1 Supreme Court Cases 720.* These principles are as follows:

*(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees become a part of the establishment and the workers employed in such canteens are employees of the management;*

*(ii) Even if there is non statutory obligation to provide a canteen the position is the same as in the case of statutory canteens. However if there is a mere obligation to provide facilities to run canteen, the canteen does not become part of the establishment;*

*(iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case;*

*(iv) Whether a particular facility or service has become implicitly a part of service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment whether the services available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.*

36. In case of *Hari Shankar Sharma and others Appellants v/s M/s. Artificial Limbs Manufacturing Corpora-*

*tion and others, Respondents, reported in 2002 1SCC 337,* employees were of the statutory canteen run by contractor. The question was whether the said employees were employees of the establishment or of the contractor. There was condition in the agreement between the contractor and the establishment that the new contractor should retain employees who had served under the earlier contractor. The Hon'ble Supreme Court held that such condition would not necessarily mean that such employees were employees of the establishment.

37. In case of *Ram Singh v/s Union Territory, Chandigarh, reported in (2004) 1 SCC 126,* the appellants/contract employees, who were trained electricians, employed for various jobs connected with the substation set up to supply electricity, claimed relief of regularization of their services under the Engineering Department of Chandigarh Administration on the ground that the work of maintaining supply of electricity being of a permanent and perennial nature, they should be directed to be directly employed by the administration. The claim was rejected by CAT. Petition filed under Art. 227 of the Constitution was also dismissed by the Hon'ble High Court. Hence the appellants took up the matter by way of appeal before the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court in this case that:–

> *"In determining the relationship of the employer and employee, no doubt, "control" is one of the important tests but it is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are— who has the power to select and dismiss, to pay remuneration, deduct insurance contribution, organize the work, supply tools and materials and what are the "mutual obligations" between them".*

38. The Hon'ble Supreme Court held in para No. 37 of judgment delivered in case of workmen *of Nilgiri Cooperative Marketing Society Ltd., appellant v/s State of T. N. and others, Respondents, reported in (2004) 3 Supreme Court Cases 514* that–

> *"the control tests and the organization tests therefore are not the only factors which can be said to be decisive. With a view to elicit the answer the court is required to consider several factors which would have a bearing on the result (a) who is the appointing authority (b) who is the pay master, (c) who can dismiss, (d) how long alternative service lasts, (e) the extent of control and supervision (f) the nature of the job, e. g. whether it is professional or skilled work (g) nature of establishment (h) the right to reject."*

39. Learned advocate of Party II and representative of Party III in reply to argument advanced by learned advocate of Party I, submitted that the Party III has employed the said workmen in the canteens, that, the Party III is making payment of salaries and of other monetary benefits to the said workmen, that, the Party III has covered the said workmen under provisions of the Provident Fund Act, and Employees' State Insurance Act, that, the Party III is the disciplinary authority of the said workmen, that, the Party III is the sanctioning authority in case of leave applications, and that, the Party III has exclusive supervision and control over the canteens. Therefore, according to them, it cannot be said that the said workmen are employees of the Party II. Learned advocate of the Party II relied upon decisions from various reported cases which are necessary to be referred.

40. In case of *Steel Authority of India Ltd., and others, Appellants v/s National Union Waterfront Workers & others, Respondents, reported in (2001) 7 SCC 1,* the appellants, a Central Government Company and its Branch Manager, were engaged in manufacture and sale of various types of iron and steel materials in its Plant located in various parts of India. The business of appellants includes import and export of several products and by–products through Central marketing unit of the appellants, having a network of branches in different parts of India. Work of handling the goods in the stockyards of appellants was being entrusted to contractors after calling for tenders in that behalf. The Government of Bengal issued notification dated 15-7-1989 under Section 10(1) of the CLRA Act prohibiting employment of contract labour in four specified stockyards of the appellants. The Government kept in abeyance the said notification initially for a period of six months by notification dated 28-8-89 and thereafter extended that period from time to time. The Government did not extend period beyond 31-8-94. The first respondent Union representing the cause of 353 contract labour filed Writ Petition in Calcutta High Court seeking a direction to the appellants to absorb contract labour in their regular establishment in view of the notification issued u/s 10(1) of the CLRA Act on 15-7-89 and further praying that the notification dated 28-8-89 keeping the said notification dated 15-7-89 in abeyance be quashed. The Hon'ble High Court allowed the Writ Petition.

41. One of the issues which was for consideration before the Hon'ble Supreme Court in the above re-

ported case of *Steel Authority of Indian Ltd., and others* was whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer the relationship of master and servant between him (the principal employer) and the contract labour emerges. The Hon'ble Supreme Court did not accept contention raised by learned advocate of the contract labour that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour.

42. The Hon'ble Supreme Court held in the above reported case of *Steel Authority of India Ltd.,* and others that:–

> *"Engagement of contract labour in connection with Work entrusted to him does not culminate in emergence of master and servant relationship between the principal employer and the contract labour. Where workman is hired through a contractor, master and servant relationship exists. But where a workmen is hired in or in connection with work of an establishment to produce a given result or the contractor supplies workman for any work of the establishment, unless the contract is mere camouflage, the workman cannot be treated as an employee of the establishment."*

43. The Hon'ble Supreme Court observed in para No. 5 of judgement delivered in case of *Hari Shankar Sharma and others, Appellants v/s M/s. Artificial Links Manufacturing Corporation and others, Respondents reported in 2002 1 CLR 13* and upon which reliance is placed by learned advocate of the Party II that–

> *"assuming that Section 46 of the Factories Act, was applicable to the respondent No. 1, it cannot be said as an absolute proposition of law that whenever in discharge of a statutory mandate a canteen is set up or other facility provided by an establishment, the employees of the canteen or such other facility become the employees of that establishments. It would depend on how the obligation is discharged by the establishment.*

44. In case of *Workmen of the Canteen of Coats of India Ltd., v/s Coates of India Ltd., and others, Respondents reported in 2004 3 Supreme Court cases 547* employees were of the statutory canteen run by contractor in the premises of Industrial establishment. The Hon'ble Supreme Court held that the provision in Factories Act requiring a canteen to be provided in the industrial establishment premises is not decisive to hold that the workmen employed in such a canteen are workmen of the establishment.

45. The Hon'ble Supreme Court in case of *Dharangadhra Chemicals Works Ltd., v/s State of Saurashtra and others reported in 1957 I LLJ 477* set out guiding principles to determine employer and employee relationship. These guiding principles are referred by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 182 of 2004 *(M/s. Sesa Goa Limited v/s The Mormugao Waterfront Workers Union and 3 others)* decided on 29-10-2004. These guiding principles are:–

a) *the test which is uniformly applied in order to determine the relationship is existence of right to control in respect of the manner in which the work is to be done and a distinction is also drawn between a "contract for services" and a "contract of service";*

b) *the prima facie test for determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work ;*

c) *the nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition; and*

d) *the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.*

46. The said workmen are claiming to be employees of the Party II which according to them is their principal employer. It is well settled position that burden of proof lies on the party setting up plea regarding existence of such relationship. Therefore, burden lies on the said workmen to prove that they are the employees of the principal employer/Party II. So far the burden of proof is concerned, reliance can be placed upon decisions given by the Hon'ble High Court of Kerala in case of *N. C. John, Petitioner v/s Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers Union and others, Respondents reported in 1973 LAB 398,* by the Hon'ble High Court of Calcutta in case of *Swapana Das Gupta and others, petitioners v/s The first Labour Court of West Bengal and others, opposite parties, reported in 1976 LAB I. C. 202* and by the Hon'ble Supreme Court in case of *Workmen of Nilgiri Co-operative Marketing Society Ltd., Appellant v/s State of T. N. and others, Respondents, reported in 2004 (3) Supreme Court Cases 514.*

47. Terms of all contracts of which xerox copies are produced at Exb. 10 colly, except variation in service charges and in value of coupons are generally similar. It appears from terms of all the contracts that the Party III is empowered to deploy manpower for run-

ning the canteens, that, he is made responsible to see that all workers employed by him in discharge of contractual obligations are paid salaries, wages, allowance and other monetary benefits in terms of settlement and of prevailing service conditions, that, he is required to pay to the workmen no separation, gratuity, recruitment compensation or any other benefit as provided by law, that, he is made responsible to cover eligible employees under Employees State Insurance Scheme, Employees Provident Fund Scheme, to pay necessary contributions in time, to maintain necessary registers, to comply with provisions of Factories Act, Contract Labour Act, Payment of Wages Act, and of any other Act or rules applicable to him and to his workmen from time to time, that, he is required to produce on demand to the Authorized Representatives of the Company, registers of attendance, leave and overtime, to pay expenses, damages or fines due to his failure to comply with his obligations under statute or otherwise, that, he is made responsible to ensure that workmen employed by him should comply with all safety requirements, statutory as well as prescribed by company from time to time to ensure safe operation to pay to workmen any compensation that may be payable to them due to accident, to render medical aid to any workmen in case of accident during discharge of duties, to ensure that his workmen do not indulge in disorderly behaviour, indiscipline or in any other misconduct and to take disciplinary action as may be deemed fit, to settle any dispute that may arise between him and his workmen and to implement any obligation that may be under taken by him in agreement with workmen, that he is required to continue with charge of the canteen premises on "as is where is basis" along with furniture, fixture and fittings, utensils, crockery, cutlery and other equipments given to him by the company from time to time and to maintain all these items in good condition, that, he is made responsible to replace or to pay replacement cost of the items in case if there is any shortage or loss of these items, that, he is required to draw raw material as per requirements from suppliers appointed by the company, on basis of indents submitted by him and which are duly approved by the canteen supervisor, to store the items in neat, tidy, clean and hygienic conditions, to maintain required documents, registers showing quantities of items received, inventory of stock and items, to exercise utmost care in economic use of the articles, to check and verify bills of suppliers for accuracy of the quantities of supplies accepted and forwarded to personal department for payment, that, he is made responsible to maintain the canteen premises, furniture, fixtures and all other items of the canteen in proper and good condition at all times, to supply tea, coffee, snacks, meals etc. at the specified times and at the specified rates with quantities, to ensure that the workmen employed by him are medically fit for handling food and that the supervisors appointed by him shall supervise the work of the workers, that he is made responsible to store the material supplied to him in neat, tidy and hygienic manner and to pay cost of the materials if the materials are found unfit to consumption due to negligence on part of his workers. Cummulative effect of all these terms stated in the contracts coupled with evidence of the Deputy General Manager and of the Party III will certainly go to show that the Party III is given exclusive right to supervise and to control the work done by the workmen not only in the matter of directing what work the workmen is to do but also the manner in which the workmen should do the work and that the Party III has exclusive control and supervision over the said workmen as well as over operation of the canteens.

48. I am aware that terms stated in the contracts also further go to show that the company, that is, the Party II is also exercising effective control over the contractor, that is, the Party III on certain matters in regard to the running of the canteen. On basis of decision given by the Hon'ble Supreme Court in case of *Haldia Refinery Canteen Employees Union and Others, Appellants v/s Indian Oil Corporation Ltd., and Others, Respondents, reported in 2005 II CLR 457* and which is placed before me by learned advocate of the Party II, I hold that such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to employees of the establishment. This however, does not mean that the employees working in the canteen have become the employees of the management.

49. The Party II appointed the Party III as a contractor of works canteen for the first time under letter dated 8-4-1989 of which xerox copy is produced at Exb. W-2. The Party III is directed under this letter to engage the same employees and to abide by all the terms and conditions of the settlement which M/s. V. N. Acharya had signed with his workmen. The Party III published notice on the very day that is on 8-4-1989 of which xerox copy is at Exb. W-3 stating that he has been appointed by management of the Party II as contractor of works canteen, and that, all the employees is non-management group on the regular pay roll of Mr. V. N. Acharya at the works canteen will hence-forth be our employees. It becomes implicitly clear from this notice that he has treated all workmen of the works canteen as his employees and not employees of the Party II with effect from 1-4-1989. The workmen of the works canteen never took objection to such relationship of employer and employees as stated in the notice as rightly pointed out by representative of the Party III.

50. It is not in dispute that the Party III has covered workmen of the canteens by provisions contained in the Employees State Insurance Act, Employees Provident Fund Act and of Payment of Gratuity Act which are the Legislations beneficial to the workers. He is paying to the workmen salaries and other monetary benefits which are being reimbursed to him by the Party II. He is getting raw material required for food in the canteens from suppliers appointed by the Party II. He admitted in his para No. 141 of his cross examina-

tion that the Party II is directly making payment of the raw materials to the suppliers. He is maintaining attendance registers of the workmen. Xerox copies of the attendance registers which are for the months of January 1991, December 1991, January 1993, December 1993, January 2003, December 2003, January 2005 and for the month of December 2005 are produced at Exb. 75 to Exb. 82. He has sanctioned leave applications submitted by the workmen. Xerox copies of leave applications given by twelve employees are produced at Exb. 83, colly. These applications are dated 25-3-2003, 22-4-2003, 30-4-2003, 15-8-2003, 22-8-2003, 19-3-2003, 11-3-2003, 4-1-2003, 23-3-2004, 6-8-2006, 3-4-2006, 14-4-2006, 2-4-2006, and lastly 10-5-2006. He has maintained shift schedules of the workmen of canteens. The shift schedules which are for the months of November, 2006 and February, 2003 are at Exb. 84 colly. He has given warnings from time to time to defaulting employees/workmen. The original warning letters, seven in number, and which are under his signatures are at Exb. 85. Out of these seven letters, five are issued on 22-6-2001, while the remaining two on 20-12-2000.

51. The Party III has issued show cause notices against workmen, Rama Naik, and Yamunappa Hosamani. Xerox copies of the show cause notices bearing his signatures are at Exb. 86 and Exb. 96 respectively. These two notices were issued on 18-5-2005 and on 1-6-2006, respectively. Xerox copies of charge sheets issued against these two workmen are produced at Exb. 88 and at Exb. 97 respectively. Departmental inquires were held against both of them by making appointments of Enquiry Officers. On basis of inquiry reports submitted by inquiry officers, he has with held four increments of each of these two workmen. Xerox copies of the letter whereunder such punishments are imposed on these two workmen are at Exb. 95 and at Exb. 101 respectively.

52. Xerox copy of charge sheet dated 15-6-1994 issued against workmen, Vithoo Rodrigues and which is under signature of Party III is at Exb. 155. Xerox copy of show cause notice issued against workman, Francis D'Souza and which is under signature of B. S. Shetty who is working partner of Party III is at Exb. 156. Xerox copy of letter dated 20-9-1995 whereunder punishment is imposed upon workman, Manjunath Naik and which is signed by the working partner, B. S. Shetty is at Exb. 157. Xerox copy of letter dated 12-7-1999 whereunder punishment is imposed upon workman, Sukmar Pujari and which is under signature of the Party III is at Exb. 159. Letter dated 11-1-1999 whereunder workman, Siddesh Shetty is kept suspended from service pending inquiry and which is under signature of the partner, B. S. Shetty is at Exb. 160. Explanation given by this workman on 14-1-1999 and which is addressed to the Party III is at Exb. 161. Letter whereunder warning is issued to this workman on 12-2-1999 and which is under signature of the partner, B. S. Shetty is at Exb. 162.

53. Xerox copy of letter dated 1-6-2005 whereunder workman, Eknath Shirodkar is promoted to the category of Supervisor in Grade III is at Exb. 125. Xerox copy of letter dated 5-12-2005 whereunder this workman is confirmed in the said category is at Exb. 126. Xerox copy of letter dated 2-1-2001 whereunder worker, Sommappa Chawan is promoted is produced at Exb. 166. All these xerox copies are under signatures of the partner, B. S. Shetty.

54. Retirement dues of workman, Magno D'Souza are fully and finally settled and which is under signature of the partner, B. S. Shetty is at Exb. 167. This letter is dated 25-3-1996.

55. Complaint addressed by the workman Shalgimugam Halgi to the Party III is at Exb. 133.

56. The Party III has accepted resignation which was submitted by workman, Damu Revodkar. Xerox copies of resignation letter and of letter whereunder the workmen is informed that his resignation has been accepted are at Exb. 102 and 103 respectively. Original settlement whereunder he has settled full and final dues payable to the workman, Revodkar is at Exb. 104. He has accepted resignation submitted by another workman, Clifton Mendes. Original resignation letter is at Exb. 105.

57. Learned advocate of the Party I has taken objection to read the above documents in evidence on the grounds that the original documents of which xerox copies are produced are not produced on record by the Party III. No satisfactory explanation is forthcoming by or on behalf of the Party III as to why the originals are not produced. The partner, B. S. Shetty who has signed some of the documents is not examined to prove signatures and contents. It follows that the documents are not duly proved, and therefore, according to him, those documents cannot be read in evidence. He relied upon decision given by the Hon'ble High Court of Orissa in case of *Life Insurance Corporation of India, petitioner v/s Narmada Agarwalla and others, Respondents, reported in A.I.R.1993 Orissa 103* wherein the Hon'ble High Court held that once a document is marked on admission, contents thereof are also treated to be admitted but not its truth. It appears from facts of this reported case that the appeals were filed by the defendant and those were out of a common judgement in two suits based on the same cause of action. The proceedings in hand is reference under provisions of the Industrial Disputes Act, 1947. It is settled position that, provisions of the Indian Evidence Act, 1872, are not strictly applicable, however principles underlying it are applicable to the proceedings before Industrial Tribunal or the Labour Court. Strict proof as required by provisions of the Indian Evidence Act, 1872, is not required in such proceedings. It is true that the Party III has not examined his working partner. However, it should be remembered that being partner the Party III must be acquainted with handwriting and signature of B. S. Shetty. I, therefore, do not agree with argument advanced by learned advocate of the Party I.

58. Next contention which is raised by learned advocate of the Party I is that the Goa Shops and

Industrial Workers Union by sending letter dated 12-3-1997 (Exb.W-4) raised demand before the Party II to treat the said workmen as regular employees of the Party II. Most of the documents which are referred to above have taken place after the year 1997 and those are produced on record after the year 2003. Possibility that these documents are prepared to defeat claim of the workmen cannot be overruled. Therefore, according to him, it will not be proper and correct to give weightage to such documents in evidence to support case made out by the Party II and Party III. The documents can be produced at any stage of the proceedings. Only because most of the documents are produced at late stage, that is, after the year 2003 it will not be correct to neglect these documents in evidence. All the documents appear to have been prepared regularly and during course of business. These is no sufficient and convincing evidence and there are no such circumstances to draw inference that the said documents are prepared by the Party III to defeat claim made out by the said workmen. I, therefore, do not agree with argument advanced by learned advocate of the Party I.

59. Evidence of the Party III supported by the above mentioned documents makes it clear that the Party III is also disciplinary authority of the workmen working in the canteens. It is evident that office bearer of the Union representing the workmen entered into settlements with B. S. Shetty on 9-4-1986. Xerox copy of the settlement which was for period from 1-1-1985 to 31-12-1987 is at Exb. E-1. Office bearers of the Union representing the workmen entered into settlement with B. S. Shetty and with the Party III on 9-1-1989, 22-6-1995, 27-7-2001 and lastly on 3-5-2002. Xerox copy of settlement dated 9-1-1989 which was binding till 31-12-1990 is at Exb. E-7. Xerox copy of settlement dated 22-6-1995 which was for period from 1-1-1994 to 31-12-1996 is at Exb. E-2. Xerox copy of settlement dated 27-7-2001 which was for period from 1-1-1997 to 31-12-1999 is at Exb. E-8. Xerox copy of settlement dated 3-5-2002 which was for period from 1-1-2000 to 31-12-2003 is at Exb. E-3. In addition, there is a xerox copy at Exb. E-4 of minutes of meeting held on 15th March, 2002 between the Party III and his workmen represented by Goa Shops and Industrial Workers Union. Under all these settlements certain terms and conditions are agreed upon between the parties with regard to service conditions of the workmen working in the canteens. There were two settlements in case of *Haldia Refinery Canteen Employees Union and others, Appellants v/s Indian Oil Corporation Ltd., and others, Respondents reported in 2005 II CLR 456.* First settlement wherein certain terms and conditions were agreed upon between the parties with regard to some labour issues relating to the workmen employed by the contractor. Another settlement between the same parties was also arrived at and it was concerning once again labour issues between the workmen and contractor. Respondent-management was not a party to either of these two settlements. On basis of these facts, the Hon'ble Supreme Court held that the workmen were treating themselves to be the employees of the contractor and not that of the management. In the present case also the Party II is not party to any of the settlements which are arrived at between the Party III and B. S. Shetty on one hand, and representatives of the Union representing the said workmen, on the other. These facts are very identical to the facts of the reported case of *Haldia Refinery Canteen Employees Union and others.* Relying upon decision given by the Hon'ble Supreme Court in this reported case, I hold that since representative of the Union representing the said workmen entered into settlements with the Party III and with his partner, B. S. Shetty and since the Party II is not party to any of these settlements the said workmen treated themselves to be the employees of the contractor, that is, of the Party III and not that of the management.

60. In case between *Steel Authority of India Ltd. and Union of India and others reported in 2006-III LLJ 1037* and which is placed before me by representative of the Party III, a definite stand was taken by the employees that they had been working under contractors. The Hon'ble Supreme Court held that it would not lie in their mouth to take a contradictory plea that they were also workmen of the principal employer, and that, to raise such a mutually destructive plea was impermissible in law. Relying upon this decision, I hold that the said workmen in the present reference who have treated themselves to be employees of the contractors, now they cannot turn around and claim that they are the workmen of the principal employer, that is, of the Party II. Considering all these and above circumstances and tests laid down by decisions from various reported cases placed before me by learned advocates of both parties, I hold that, workmen represented by the said Union are not employees of the principal employer, that is, of the Party II. I, therefore, do not agree with argument advanced by learned advocate of the Party I.

61. The Party I is claiming the contracts entered into by and between the Party II and Party III as sham and bogus mainly on the grounds that the said workmen are direct employees of the principal employer, that is, of the Party II, and that, the workmen are treated as contract labour under the said contracts by the Party II with a view to keep away the said workmen from status of permanency in the service and from getting benefits which the regular employees of the Party II are getting. The Party I did not succeed in proving that the said workmen are employees of the principal employer, that is, of the Party II.

62. The "contract labour" has been defined in Section 2(1)(b) of Contract Labour (Regulation and Abolition) Act, 1970, to mean a workman who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of principal employer.

Section 2(1)(c) of the said Act, 1970, defines "contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contract.

63. It clearly reveals from para No. 48 of evidence of the Party III that he has obtained necessary licence from competent authority under the CLRA Act, 1970 and rules framed thereunder to run works canteen and labour canteen. Original licences which are dated 12-6-1997 and 12-3-1991 are produced at Exb. 17 and at Exb. 73. These licences are renewed by the competent authority, that is, by the Deputy Labour Commissioner. He has employed the workmen represented by the said Union to do work in the canteens. Therefore, it is a contract labour system introduced by the Party II. In other words, the contractor has been interposed on the ground of having undertaken to produce any given result for the establishment and not for supply of contract labour for work of the establishment that is of the Party II. The contracts entered into by the Party II in favour of the Party III do not reveal to be for purpose of avoiding, compliance with various beneficial legislations so as to deprive the workmen of the canteens from benefits available under the beneficial legislations.

64. The evidence and material on record indicates that the Party III has a complete control over the workmen. He is processing their leave applications. It is also evident that he is deducting loan installments from salaries of the concerned workmen as per directions from the financial institution from which the concerned workmen obtained loans. He is taking action against the workmen if any misconduct was committed by them. He is making payment of salary and of other monetary benefits to the workmen of the canteens. The contracts which are brought on record reveal that the Party II did not have any supervisory control over the workmen of the canteens. He is supervising method and manner in which the canteens should work. It is no doubt true that the workmen have been working continuously inspite of change in contractors, but that would not be a factor which would conclusively determine nature of relationship between the parties. In view of these facts and circumstances, above discussion and relying upon decision given by the Hon'ble High Court of Bombay in case of *Bhartiya Kamgar Sena, Petitioner v/s Udhe India Ltd., and another Respondents, reported in 2007 (6) Mh L.J.185,* I hold that the contracts between the Party II and Party III cannot be said to be sham and bogus. My answer to the issue is in negative.

65. *Issue Nos. 2 & 3:* For the sake of convenience and to avoid repetition I am deciding these two issues together. The workmen of canteens and who are represented by the said Union are claiming their absorption as regular workmen and fitment in the service of the Party II on the grounds that they are direct employees of the principal employer, that is, of the Party II and that the contracts which are entered into by and between Party II and Party III where under they are treated as contract labour are sham and bogus.

66. The Hon'ble Supreme Court observed in para No. 107 of judgment delivered in case of *Steel Authority of India Ltd., and others, reported in (2001) 7 Supreme Court Cases 1* that–

> *"An analysis of the cases, discussed above, shows that they fall in three classes (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered, (ii) where the contract was found to be a sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited (iii) where in discharge of statutory obligation of maintaining a canteen in an establishment the principal employer availed services of a contractor the courts held that the contract labour would indeed be the employees of the principal employer."*

67. The above observations are relied upon by learned advocate of the Party I to claim absorption of workmen of the canteens and their fitment in service of the Party II. To counter the claim, learned advocate of the Party II argued that neither the workmen of the canteen are employees of the Party II nor the contracts in dispute are sham and bogus. The labour contract system which is permissible under the CLRA Act, 1970 is not abolished by the Government. Therefore, according to him, workmen of the canteens are not entitled to the claim of absorption as regular workmen and of fitment in service of the Party II.

68. The Hon'ble Supreme Court held in case between *Ghatge and Patil Concern's Employees Union and Ghatge and Patil (Transports) (Private) Ltd., and another, reported in 1968 1 LLJ 566* (Supreme Court) that, there does not appear to be any bar in law to the introduction of the new contract system. This decision is prior to coming of the CLRA Act, 1970 in force. The contract labour system introduced by the Party II for working of the canteens which have a

statutory flavour is permissible under the new Act of 1970.

69. The Hon'ble Supreme Court held in para No. 125(5) of judgement delivered in case of *Steel Authority of India Ltd., and other* referred to above that–

> *"if the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder ."*

Para 6 runs as follows –

> *"If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour if otherwise found suitable and if necessary by relaxing the condition to maximum age approximately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the conditions as to academic qualifications other than technical qualifications."*

70. On basis of what has been held by the Hon'ble Supreme Court in para No. 125(5) and (6) quoted above it can safely be said by way of inference that if the contract is found genuine the contract labour cannot be treated as employees of the principal employer and that, the principal employer cannot be directed to regularize services of the contract labour in the establishment concerned.

71. The Hon'ble Supreme Court held in case of *Gujrat Electricity Board, Thermal Power Station Ukai, Gujrat, Petitioner v/s Hind Mazdoor Sabha and others, Respondents, reported in 1995 1CLR 967* that if the contract labour is not abolished the Industrial adjudicator has to reject the reference.

72. In the present case the contracts in dispute are not proved to be sham and bogus. On the contrary, the contracts reveal to be genuine. Prohibition notification is not issued by the appropriate Government u/s 10(1) CLRA Act, 1970. Further, workmen of the canteens are also not proved to be employees of the principal employer, that is, of the Party II. Therefore, and relying upon decisions given by the Hon'ble Supreme Court, and which are referred to above from the cases of *Steel Authority of India Ltd., and, of Gujrat Electricity Board,* I answer the issues in negative.

73. *Issue No. 4:* The Party II raised plea in its written statement (Exb. 8) that such dispute can be raised only by Union representing the workmen of the principal employer. Therefore, the Party I Union has no locus standi to raise the present dispute. It reveals that, according to the Party II, the Union which is representing the said workmen is representing minority of the workmen and therefore the said Union has no locus standi to raise the dispute.

74. Section 36(1) of the said Act, 1947, lays down that—

*"A workman who is a party to the dispute shall be entitled to be represented in any proceeding under this Act by—*

*(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;*

*(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated.*

*(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed."*

75. Dispute in the present reference is raised not by workmen of the canteens but by the Goa Shops and Industrial Workers' Union which was representing them at the relevant time. This Union was duly registered under the Trade Unions Act, 1926. Provisions contained in Section 36(1)(a) of the said Act, 1947 confers entitlement on this Union to raise dispute on behalf of workmen of the canteens.

76. During pendency of the proceedings all workmen of the canteens became member of the said Union, that is, of Goa Trade and Commercial Workers Union w.e.f. 15-2-2006. The said Union is also registered under the Trade Union Act, 1926 as stated in para No. 1A which is introduced by way of amendment in claim statement. The said Union is also entitled to raise dispute on behalf of and to represent workmen of the canteens as per provisions contained in Section 36(1)(a) of the said Act, 1947. The plea raised by the Party II is devoid of merits and as such it must fall to the ground. I, therefore, answer the issue in negative.

77. *Issue No. 5*: The Party II raised plea in written statement (Exb. 8) that abolition of contract labour system in any operation cannot be an industrial dispute, and therefore, what has been referred is not an industrial dispute. The Party III raised plea in para No. 1 of his written statement Exb. 9 that what has been referred by the Government cannot be a subject matter of an industrial dispute.

78. Section 2(k) of the said Act, 1947 lays down that–

> *"Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."*

79. The Hon'ble Supreme Court held in case of the *Standard— Vacuum Refining Company of India Ltd., Appellants v/s their Workmen and another, Respondents, reported in AIR 1960 Supreme Court 948* and which is cited before me by learned advocate of the Party I that, when regular workmen raise dispute relating to contract labour there is Industrial Dispute. In the present case, though workmen of the canteen are not proved to be regular workmen of the Party II, the dispute which is raised by them relates to the contract system. Therefore and relying upon decision given by the Hon'ble Supreme Court in this reported case, I agree with argument advanced by learned advocate of the Party I that the dispute raised by the said Union on behalf of the workmen of the canteens is the Industrial dispute as defined under Section 2(k) of the said Act, 1947.

80. The dispute which has been raised by the said Union on behalf of workmen of the canteens owned by the Party II squarely comes within purview of definition of the Industrial Dispute. Further, the dispute as stated earlier is raised by the Union which is duly registered under the Trade Unions Act, 1926. Pleas raised by the Party II and Party III in their respective written statements do not hold water and as such do not merit consideration. I, therefore, answer the issue in negative.

81. *Issue No. 6 :* The Party I did not succeed in proving that the contracts in dispute are sham and bogus, and that, they are entitled to be absorbed as regular workmen and to fitment in service of the Party II. Therefore, there is no alternative but to answer the issue in negative. I, answer, the issue accordingly.

As a result of findings given to the issues No. 1 to 3 and 6, I proceed to adjudicate the dispute by passing order as follows:–

ORDER

1. It is hereby adjudicated that the following dispute/ /demands raised by the Goa Shops and Industrial Workers Union on 30-9-2002, on behalf of the canteen contract workpersons at M/s. Zuari Industries Ltd., (Party II) are not legal and justified?

   a. It is hereby adjudicated that the contract between ZACL (ZIL) and Shri Deepak Kharangate (Party III) with regard to running of the canteen in the factory premises is not a sham and bogus contract.

   b. It is hereby adjudicated that the workmen whose names are listed in Annexure A and B hereto and who are/were employed in the Canteen at ZACL (ZIL) through the contractor are not entitled to be absorbed as regular workmen of ZACL (ZIL) from 12-3-1997.

   c. It is hereby adjudicated that the canteen contract workpersons are not entitled to regularization, or to fitment as detailed in Annexure "C".

2 The workpersons are not entitled to any relief.

3 No order as to costs.

4 The award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/–

(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal
-cum-Labour Court-I.

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